IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

RFA No. 24/98 with C.O No. 145/98

Judgment reserved on 13.6.2007.

Date of Decision: 7th August, 2007.

For parties name see over leaf:

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,J.

Whether approved for reporting?[1]

For the Appellant: Mr. Rajnish Maniktala, Advocate.

For the Respondents:Mr. Anand Sharma, Advocate, for respondent Nos. 1 to 5 in RFA No. 24 /98 and for respondent Nos. 1, 2 in RFA 19/98, Respondent Nos. 1 to 10 in RFA No. 11/98, respondent Nos.1 to 19,21 and 23 in RFA No. 21/98, respondent Nos. 1 to 4 in RFA No. 5/98 and for respondent Nos. 1 to 4, 5 (a) to 5 (e) and 6 to 9 in RFA 22/98.

Mr. M.S. Chandel, Advocate General with Mr.Rajan Dewan Addl. Advocate General for respondents Nos. 10 and 11 in RFA 22/98, respondent Nos. 5 and 6 in RFA No. 5/98, 24 and 25 in RFA No. 21/98, 13 and 14 in RFA 11/98, 3 and 4 in RFA 19/98 and for respondent Nos. 6 and 7 in RFA No. 24/98.

Dev Darshan Sud, J.

These six appeals involve common questions of law and facts and are being disposed of by a common judgment. The learned Reference Court by its order dated 13.6.1995 consolidated the cases, out of which the present appeals have been preferred, and ordered that the evidence recorded in the case of Vipin Kumar and others vs. National Hydro Electric Power Corporation being case No. LAC-69/93, would be read in evidence in all the cases.

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[1] Whether Reporters of Local Papers may be allowed to see the judgment?

RFA No. 24/98 with C.O No. 145/98

National Hydro Electric Power Corporation …..Appellant.
Versus
Shri Vipin Kumar and others ……Respondents.

RFA No. 22/98 with C.O No. 146/98

National Hydro Electric Power Corporation …..Appellant.
Versus
Sh. Piar Singh and others …Respondents.

RFA No. 5/98 with C.O No. 154/98

National Hydro Electric Power Corporation …..Appellant.
Versus
Sh. Pawan and others …Respondents.

RFA No. 21/98 with C.O No. 198/98

National Hydro Electric Power Corporation …..Appellant.
Versus
Smt. Sumitra Devi and others …Respondents.

RFA No. 11/98 with C.O No. 289/98

National Hydro Electric Power Corporation …..Appellant.
Versus
Sh. Kailash Chand and others …Respondents.

RFA No. 19/98 with C.O No. 152/98

National Hydro Electric Power Corporation …..Appellant.

Versus
Sh. Nar Singh and others …Respondents.

Land acquisition proceedings were initiated for acquisition of the land including the land of the petitioners and other persons for the purposes of establishing a hydro electric project by the appellant. Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as "the Act") was published in H.P. Gazette on 13.6.1992. Copies of this notification were also prominently displaced at conspicuous places in the locality where the land was situated. Other proceedings under the Act including hearing of objections under Section 5 –A were completed in accordance with law, where after Notification under Sections 6 and 7 of the Act were published in the Rajpatra on 23.11.1992 and two daily news papers on 5.12.1992 and 10.12.1992.

It is undisputed that the notification in these appeals relates to the land(s) which was acquired for the purposes hydro electric project and the land including that of the petitioners and the structures standing thereon were to be submerged in the reservoir. The award of the Collector states in unequivocal terms that land acquired is to submerge in the dam reservoir, which fact is not disputed before this Court. The award was announced by the Collector on 26.9.1993. The claimants were not satisfied with the award and therefore, sought enhancement on a reference made to the Court under Section 18 of the Act.. In the present appeal the appellant has challenged the enhancement granted by the learned Reference Court and cross objections filed by the claimants/respondents for increase in compensation. Learned counsel appearing for the parties have submitted on the points raised by them in the appeal/cross-objections. The details of the land and the structure subject matter of the acquisition proceedings are given as under:-

Sr. No.	Case No.	Title of the Petition	Area of land and Name of Structure acquired	amount compensation awarded. by the Collector
1.	69/93	Vipin Kumar Vs NHPC etc.	4-7-12 structurtes	85,163/- 1,04,464.
2.	73/93	Piar Singh Vs NHPC etc	3-6-0 structures	64,140/- 24,652/-
3.	74/93	Pawan Vs NHPC etc.	4-12-18 structures	86,384/- 98,495/-
4.	76/93	Karam Singh Vs NHPC etc	10-1-0 structures	2,01,000/- 22,551/-
5.	77/93	Kailash Chand Vs NHPC etc.	13-11-0 structures	2,64,640/- 20,932/-

After trial, the compensation awarded by the Land Acquisition Collector was increased but, deduction of 65% was made for developmental charges on the amount awarded by the Reference Court. The compensation awarded to the claimants after deduction was:-

Sr. No.	Name and title of The petition			Amount of enhanced compensation.
1.	69 of 1993, Vipin Kumar Vs NHPC etc.	land Structures Total	: : :	50,268/- 52232/- 1,02,500/-
2.	73 of 1993 Piar Singh	land Structures	: :	36,706/- 12,326/-

	Vs NHPC etc.	Total	:	149,032/-
3.	74 of 1993	Land	:	49,697/-
	Pawan etc.	Structures	:	49,247/-
	Vs NHPC etc.	Total	:	98,944/-
4.	76 of 1993	land	:	1,15,575/-
	Karam Singh	Structures	:	11,276/-
	Vs NHPC etc.	Total	:	1,26,851/-
5.	77 of 1993	land	:	1,52,151/-
	Vipin Kumar	Structures	:	10,466/-
	Vs NHPC etc.	Total	:	1,62,617/-

Learned counsel appearing for the appellant has submitted that the award is not in accordance with Law. He submits that the learned Reference Court has not at all considered the sale deed Ext. R.1 which was brought on record as evidence by the appellant before the Reference Court. His submission is that the sale instance brought on record by the respondents was not sufficient to grant increase in compensation for the land as demanded by the claimants nor could form the basis for determination of the fair value of compensation to be determined in accordance with law. He submits that the instance which has been brought on the record by the appellant, related to comparable sale instance both in terms of size and value, therefore, the amount determined by the Reference Court requires to be set aside.

I have heard learned counsel for the parties and gone through the record. Learned counsel for the appellant submits that the decision of the Hon'ble Supreme Court in **Cement Corpn. Of India Ltd. Vs. Purya and others (2004) 8 SCC 270** holds that it is not necessary to produce vendor and vendee of the sale deed, which can be produced in evidence without the vendor and vendee being examined and that the learned Reference Court was in error in dismissing the Ex. R-1merely because the parties to the deed had not been produced in evidence. It was held:-

"26. In the acquisition proceedings, sale deeds are required to be brought on record for the purpose of determining market value payable to the owner of the land when it is sought to be acquired.

27. Although by reason of the aforementioned provision the parties are free to produce original documents and prove the same in accordance with the terms of the rules of evidence as envisaged under the Indian Evidence Act, the LA Act provides for an alternative thereto by inserting the said provision in terms whereof the certified copies which are otherwise secondary evidence may be brought on record evidencing a transaction. Such transactions in terms of the aforementioned provision may be accepted in evidence. Acceptance of an evidence is not a term of art. It has an etymological meaning. It envisages exercise of judicial mind to the materials on record. Acceptance of evidence by a court would be dependent upon the facts of the case and other relevant factors. A piece of evidence in a given situation may be accepted by a court of law but in another it may not be.

28. Section 51-A of the LA Act may be read literally and having regard to the ordinary meaning which can be attributed to the term "acceptance of evidence" relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. We are not oblivious of the fact that only by bringing a documentary evidence in the record it is not automatically brought on the record. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of sale deed by itself could not be held to be inadmissible as thereby a secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This,

however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word "may". A discretion, therefore, has been conferred upon a court to be exercised judicially i.e. upon taking into consideration the relevant factors.

31. Thus, the reasoning of this Court in *Narasaiah* case that Section 51-A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document, is the correct position in law. This finding in Narasaiah case is also supported by the decision of this Court in the case of *Mangaldas Raghavji Ruparel.*

35. A registered document in terms of Section 51 A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the court may act on the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf.

39. While it is clear that under Section 51 A of the LA Act a presumption as to the genuineness of the contents of the document is permitted to be raised, the same can be relied upon only if the said presumption is not rebutted by other evidence. In the said view of the matter we are of the opinion the decision of this Court in the case of land Acquisition Officer and *Mandal Revenue Officer v. V. Narasaiah (supra*) lays down the correct law."

Learned counsel for the appellant submits that Ext. R-1 which was a certified copy of the sale deed should be the basis for determining the compensation payable to the claimants. There is no dispute about the proposition that the vendor and the vendee are not required to be produced in evidence. A few facts may be noticed before consideration of Ext. R-1. The case of the appellant was fixed for evidence on a number of occasions but neither list of witnesses was filed nor was any attempt made to lead any evidence. After three/ four adjournments, on 17.4.1996, the following order was passed by the learned Reference Court:-

> "17.4.96.
> Present: Sh. Vaneet Gupta Advocate, for the petitioners.
> Sh. B.P. Sharma, Advocate, for respondent No. 1.
> Sh. M.L. Selag Pal Ld. DA for respondent Nos. 2 and 3.
> Ld. Counsel for respondent No. 1 has moved copy of sale deed as Ex. R-1 and evidence of respondent No. 1 is closed. Ld. DA does not want to lead any evidence on behalf of respondent Nos. 2 and 3 and evidence on behalf of respondents closed. Now to come up for arguments on 17.5.1996."

Ext. R-1 is a sale deed registered on 28.8.1993. The award by the Collector was passed on 25.6.1993. This deed is not only post notification (under Section 4 of the Act) transaction but also a transaction subsequent to the announcement of the award by the Collector. The land sold by virtue of this deed is half share of 2 bighas 19 biswas i.e. 1 bigha 9 biswas 10 biswansie. The order of the learned Reference Court admitting the deed in evidence has been noticed as no attempt has been made by the appellant to establish the bonafide nature of the transaction or to establish the similarity between the acquired land and that which is evidenced by Ext. R-1. Taking the document as it is, it must be noticed that the transaction is after the notification under Section 4 of the Act, (published on 13.6.1992), and after passing of the award by the Collector

on 25.6.1993. The similarity between the acquired land and the land subject matter of Ext. R-1 has not been established. Half share in a joint holding can hardly furnish an accurate instance for determination of just compensation. This sale deed was also not used to confront any of the witnesses of the claimants in order to prove the bonafide nature of the transaction and to rebut the value of the land brought on record by the appellants. In **Rishi Pal Singh and others vs. Meerut Development Authority and another (2006) 3 SCC 205** the Hon'ble Supreme Court has held :-

> "5. On merits the learned counsel submits with reference to the impugned judgment of the High Court that only two reasons have been given by the High Court for setting aside the order of the Reference Court and remanding the case back to it. First reason is that exemplars relied upon by the Reference Court are of small plots of land whereas the acquisition is of a large tracts of land i. e. about 180 acres. The second reason given in the impugned judgment for remand is that exemplars filed by the acquiring authority i. e. appellants (sic respondent) before us, were not considered by the reference Court. The learned counsel for the appellants has taken us through the judgment of the Reference Court to show that both the reasons given by the High Court in its impugned order are factually incorrect. With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, specially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The

Reference Court has made adequate discount for taking the exemplars of smaller plots into consideration. It appears that the attention of the High court was not drawn to this part of the judgment of the Reference Court which has resulted in the High Court completely overlooking the relevant discussion in the judgment of the Reference Court." *(emphasis supplied)*

In **ONGC Ltd. vs. Sendhabhai Vastram Patel and others (2005) (6) SCC 454** it has been held:-

"**12**. The Reference Court, it is trite, has to apply the comparable sales method as also the situation of the land which is to be appreciated upon considering the question as to whether acquired land is similar to any land sold in the vicinity.

13. In *Shaji Kuriakose and Another v. Indian oil Corpn. Ltd. and Others*, this court observed:

"*3*. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalization of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2)

that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5)that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land. "[see also *P. Ram Reddy and Others v. Land Acquisition Officer, Hyderabad urban Development Authority, hyderabad and Others, and Panna Lal ghosh and Others v. Land Acquisition collector and Others*].

15. Instances of sale in respect of the similar land situated in the same village and / or neighbouring villages should have been taken as guiding factors by the Reference judge as also by the High Court. In absence of any better evidence, the Reference judge as also the High Court could have made addition in the sale prices for the land as evidenced by the said deeds of sale.

16. In *Viluben Jhalejar Contractor (Dead) By Lrs. v. State of Gujarat*, this court held:

"*18*. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

19. Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller

unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4 (1) or otherwise, other sale instances as well as other evidences have to be considered.

20. The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive factors	***Negative factors***
(i) Smallness of size	i) largeness of area
(ii) Proximity to a road	ii) situation in the interior at a distance from the road.
(iii) Frontage on a road	(iii) Narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(iv) Lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-a vis land under Acquisition	(vi) some special disadvantageous factors which would deter a purchaser
(vii) special value for an owner of an adjoining property to Whom it may have some very Special advantage.	

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed

> preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.
>
> " it was further observed : (SCC p. 798, para 24)
>
> "*24*. The purpose for which acquisition is made is also a relevant factor for determining the market value. In *Basavva v. Spl. Land acquisition Officer* deduction to the extent of 65% was made towards development charges. "
>
> (*emphasis supplied*)

Learned counsel further submitted that in **Union of India vs. Harinder Pal Singh and others (2005) 12 SCC 564** the instances of sale of small plots cannot form the basis for determination of the just compensation as contemplated by the Act.

One another fact need to be noticed. The land was acquired for the purposes of reservoir for the Hydro Electric Project and was to submerge in water. In **Karimbanakkal Sulaiman vs. Special Tahsildar For K.A.K.P.I.P. (2004) (13) SCC 642** the Hon'ble Supreme Court has held:-

> "3. The counsel for the appellant submitted that Ext. A-1 document was relied on by the High Court for the purpose of enhancing the land value and it is pointed out that the land shown in Ext. A-1 dated 9.9.1982 was purchased by AW 2 at the rate of Rs. 4693 per acre and the High Court had granted only 1/4th of the price shown in Ext. A-1. This, according to the appellant, is erroneous and the High Court should have fixed the land value on the basis of Ext. A-1 document. It may be noticed that the document Ext. A-1 came into existence after a period of one year of the date of Section 4 (1) notification. Though it is stated in Ext. A-1 that there was a registered agreement for sale in respect of Ext. A-1 that transaction, that agreement was not produced. Moreover, Ext. A-1 is in respect of 5 cents of land, whereas the acquisition was in respect of about 50

> cents of land. These factors have been taken into consideration by the High Court in fixing the land value. Moreover, the land acquired was agricultural land and it was acquired for the purpose of an irrigation project. There is nothing on record to show that the land had any commercial value or future potentialities. We do not think that the land value fixed is too low to be interfered with by this Court."

The law laid down by the Hon'ble Supreme Court in *O.N.G.C ltd. and Rishi Pal Singh and others* (supra) would show that there is no bar to considering the instances of sale of small holdings of land. The proximity from the point of view of time as well as situation and other advantages has to be considered. No attempt having been made in the present case to establish the factors as enumerated in the judgments, the appellant cannot make a grievance that the learned court below had committed any illegality in fixing the compensation after making the deduction of 65% from the assessed value. This deduction itself more than balances the equities in the case. The other factors that the land was to submerge in the reservoir would not justify the deduction on such a large scale, however, in the facts and circumstances of the case no interference is called for.

The learned Reference Court, after consideration of the facts on the record deducted the 65% of the value determined by it. In other words only 1/3rd of the determined amount was awarded to the respondents-claimants. The appellant has not led any evidence to establish that the sale instance brought on record by it is bonafide or the similarity of the land which was the subject matter of the acquisition of the sale deed Ext R-1.

In **Ravinder Narain and another vs Union of India (2003) 4 SCC 481** the Hon'ble Supreme Court has reiterated the

principles for determination of the compensation to be awarded in the case of acquisition of land:-

> "9.It can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:
> (i) when sale is within a reasonable time of the date of notification under Section 4 (1);
> (ii) it should be a bona fide transaction;
> (iii) it should be of the land acquired or of the land adjacent to the land acquired; and
> (iv) it should possess similar advantages."

The Hon'ble Supreme Court has in a number of cases laid down the amount of deduction for developmental charges. The amount deducted is 25% to 50% in some cases. Though the normal rule is that about 1/3rd of the awarded amount is to be deducted as developmental charges depending upon the facts and circumstances of this case. The reference is made to:-

Kasturi and others Vs. State of Haryana (2003) 1 SCC 354 , Tejumal Vs. State of U.P. (2003) 10 SCC 525, Ahad Brother Vs State of H.P. and another (2005) 1 SCC 545, State of Punjab Vs. Harcharan Singh (2006) 9 SCC 723, Kiran Tandon Vs. Allahabad Development Authority (2004) 10 SCC 745, and **Hanumanta Reddy Vs. Land Acquisition Officer (2003) 2 SCC 642.**

The normal rule laid down for deduction by the Hon'ble Supreme Court is that 1/3rd of the charges should be deducted as developmental charges. In some cases, the deduction made is about 50%. The facts on record show that the land acquired was to sub-merge in the Dam which has been stated in clear and unambiguous terms in the award which has been made by the Land Acquisition Collector. The award of the Collector is:-

> "……..for the purpose namely land to be submerged in dam reservoir Chamera HE Project Stage-1 'NHPC Ltd.' which was published in the H.P. Gazette on 13.6.1992. …..…..."

The totality of the evidence which have been brought on the record of the case shows that barring the two sale instances, namely one brought on the record by the respondents-claimants Ext. P-5, sale deed registered on 4.2.1988 and Ext. R-1, there is no evidence of comparable sale instances. No interference is called for in the assessment made by the learned Reference Court as the deduction of 65% has been made from the value of fair and just compensation determined by the Court. This deduction more than balances the equities in favour of both the parties. I do not find that the learned Reference Court has committed any error in awarding the compensation which is the subject matter of the present appeals. Applying the principles laid down by the Hon'ble Supreme Court in the judgments as noticed above, there is no infirmity in the award. The disparity in the individual holdings of the claimants as also the sale instance Ext. R-1 is not of such a nature as would justify the invocation of largeness of the area in order to exclude Ext. P-5 from consideration. The sale instance brought on the record by the claimants is earlier to the notification and Ext. R-1 admittedly is a transaction which is post notification and also after the award had been made by the Land Acquisition Collector. In these circumstances, the submissions made by the learned counsel for the appellants cannot be accepted.

Crorss Objections Nos. 145,146,152,154,198 and 289 of 1998

These cross objections have been preferred by the claimants where they have claimed that the entire sale value as evidenced in Ext. P-5 which was brought on the record should be the indicator and the only

measure for awarding just compensation. It has also been averred that the learned Reference Court has erred in not awarding the value of the structures and trees standing on the land and the method adopted by him is not in accordance with the evidence on the record.

As held by me, the value of the land has been correctly determined by the learned Reference Court. The deduction of 65% which has been made, would be more than the compensation for the grievance of the appellant. The instance of sale brought by the cross-objectors is a large track of land and is not proximate in point of time to the acquisition proceedings. The learned Reference Court while considering the evidence on the question of compensation to be awarded for structure, has held as a fact that the calculations have been made on the scheduled rates of 1987. The submission made by the appellants that there has been substantial increase in the price index from 1987 till 1992 when the notification under Section 4 of the Act was issued, based on two communications addressed by the Executive Engineer to different contractors, was not sufficient to accept the contention of the respondents. The claimants-respondents had prayed for 124.18% increase on the scheduled rate of 1987. In order to balance the equities, the learned Reference Court granted an increase of 50% noting that PWD authorities had in fact, admitted the increase in the scheduled rate. The claim of the learned counsel for the claimants that the increase as prayed for in the cross-objections also cannot be sustained on the evidence on the record as I find there is nothing to show that the value has increased by 124.18%. This submission of the learned counsel for the cross-objectors is, therefore, rejected as being without merit. There is no material and evidence on the record to justify the submission of the cross-objectors that the value of the trees has also not been properly assessed by

the learned Reference Court. The appeals and the cross-objections, therefore, accordingly are dismissed. There shall be no order as to costs.

7th August, 2007 **(Dev Darshan Sud)**
(cm) **Judge.**